

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**GUIDELINES FOR FINAL PRETRIAL CONFERENCE IN BENCH TRIALS  
BEFORE DISTRICT JUDGE LUCY H. KOH**

**A. Meeting and Disclosure Prior to Pretrial Conference:** At least 21 days<sup>1</sup> before the final Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to:

1. Settlement of the Case;
2. Preparation of the Joint Pretrial Statement;
3. Preparation and exchange of pretrial materials to be served and lodged pursuant to Federal Rule of Civil Procedure 26(a)(3); and
4. Clarifying and narrowing the contested issues for trial in order to achieve a just, speedy, and efficient determination of the case.

**B. Joint Pretrial Statement and Order:** At least 14 days before the Pretrial Conference, unless otherwise ordered, the parties shall lodge and serve a Joint Pretrial Statement and Proposed Order containing the following information:

1. Substance of the Action. A brief description of the parties, the substance of claims and defenses that remain to be decided, and the operative pleadings that raise the issues;

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<sup>1</sup> Time shall be computed according to Federal Rule of Civil Procedure 6(a).

2. Relief Sought. A detailed statement of all relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents, or other evidentiary material to be presented concerning the amount of damages;
3. Undisputed Facts. A plain and concise statement of all relevant facts to which the parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits;
4. Disputed Factual Issues. A plain and concise list of the issues of fact that are contested and remain to be litigated at trial;
5. Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts;
6. Stipulations. A statement of proposed stipulations or agreements that will expedite the presentation of evidence;
7. Witnesses to be Called. A list of witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given. No party shall be permitted to call any witness in its case in chief who is not disclosed in its Joint Pretrial Statement without leave of the Court for good cause;
8. Exhibits, Schedules, Summaries. A list of all documents and other items to be offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a brief statement following each, describing its substance or purpose and the identity of the sponsoring witness;
9. Disputed Legal Issues. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions;
10. Further Discovery or Motions. A statement of all remaining discovery, if any, or any motions or matters that must be resolved prior to trial, including motions in limine;

11. Disputed Evidentiary Issues. A concise statement of each disputed evidentiary issue (even if a motion in limine will not be filed on that issue), citing supporting statutes and decisions or referring to the appropriate motion in limine;
12. Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired;
13. Estimate of Trial Time. An estimate of the total number of hours or days needed for the trial; and
14. Miscellaneous. Any other matters that will facilitate the just, speedy and efficient determination of the action.

**C. Binding Effect of the Joint Pretrial Statement and Order:** The Joint Pretrial Statement and Order described above shall recite, directly above the signature lines of each party, the following:

*The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of trial of this action, unless modified to prevent manifest injustice.*

**D. Preparation for Trial**

1. Exhibits:
  - a) At least 14 days before the final Pretrial Conference, the parties shall exchange copies of all exhibits, summaries, charts, and diagrams to be used at trial other than solely impeachment or rebuttal.
  - b) Each exhibit shall be pre-marked for identification. Counsel shall meet and confer and reach agreement upon a method for marking exhibits (for example, Plaintiff shall use numbers and Defendant shall use letters, or Plaintiff shall use numbers 100-199 and Defendant shall use numbers 200-299, etc.).
  - c) Unless otherwise ordered, at least 7 days prior to the commencement of trial, the parties shall deliver three sets of all pre-marked exhibits contained in three ring binders to Martha Parker Brown, Courtroom Deputy to Judge Koh.

d) No party shall be permitted to offer any exhibit at trial that is not disclosed in its Joint Pretrial Statement without leave of the Court for good cause, unless it is offered solely for impeachment or rebuttal.

2. Motions in Limine. Unless otherwise ordered, the parties shall file and serve any motions in limine at least 14 days before the final Pretrial Conference, and any opposition thereto at least 10 days before the final Pretrial Conference. Ordinarily, these motions will be deemed submitted without oral argument. Each motion should be presented in a separate memo and numbered as, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude . . . .” Please limit motions in limine to circumstances that actually require a ruling in advance of trial. Usually five or fewer motions per side are sufficient at the Pretrial Conference stage (without prejudice to raising matters as the trial progresses). Each motion should address a single topic, be separate, and contain no more than seven pages of briefing per side.
3. Deposition and Discovery Designations: Unless otherwise ordered, at least 14 days before the commencement of trial, the parties shall file and serve any excerpts of deposition testimony or other discovery to be offered at trial, other than solely for impeachment or rebuttal. (A hard copy of the designated deposition testimony with page and line references, or the interrogatory response or admission shall be provided.) Any objections to the use of designated excerpts and any counter-designations of deposition testimony shall be filed and served at least 10 days prior to the commencement of trial.
4. Proposed Findings of Fact and Conclusions of Law. At least 7 days prior to the Pretrial Conference, each party shall file and serve proposed findings of fact and conclusions of law. The findings of fact shall set forth in simple declarative sentences, separately numbered, all factual contentions relied upon by the party in support of its claims or defenses and shall be free of pejorative language and argument. Conclusions of law shall be supported by appropriate citation to legal authority. The proposed findings of fact and conclusions of law shall be submitted

in hard copy as well as in word processing format via e-mail to

[LHKpo@cand.uscourts.gov](mailto:LHKpo@cand.uscourts.gov).

5. **Trial Briefs:** Trial briefs are optional, but any party wishing to file a trial brief must do so not less than 7 days prior to the commencement of trial.
6. **Time Limits:** Ordinarily, the Court shall set fixed time limits at the final Pretrial Conference. All of your examination time (whether direct, cross, re-direct, or re-cross) for all witnesses must fit within your time limit and you may allocate the time as you wish. Opening and closing time limits are *in addition* to your examination time.

**E. Scheduling**

The normal trial schedule will be 9:00 a.m. to 4:30 p.m., with a lunch break from 12:00 p.m. to 1:30 p.m., on Monday, Tuesday, and Friday, and from 9:00 a.m. to 12:00 p.m. on Thursday.

**F. Settlement and Continuances**

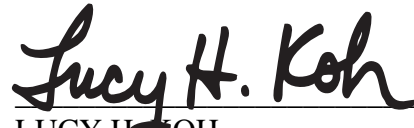
Shortly before trial or a final Pretrial Conference, counsel occasionally wish to jointly advise the Court that a settlement has been reached and seek to take the matter off calendar based on a settlement “in principle” with disputes remaining. Cases, however, cannot be taken off calendar in this manner. Unless and until a stipulated dismissal is filed or placed on the record, all parties must be prepared to proceed as scheduled. Only an advance continuance *expressly approved by the Court* will release counsel and the parties from their obligation to proceed. If counsel expect that a settlement will be final by the time of Pretrial Conference or trial, they should notify the Court immediately in writing, or, if settlement occurs over the weekend, by voice mail to Martha Parker Brown, Courtroom Deputy to Judge Koh. The Court will attempt to confer with counsel promptly to determine whether a continuance is in order. Pending such a conference, however, counsel must prepare and make all filings and be prepared to proceed with the trial.

**G. Opportunities for Junior Lawyers**

The Court strongly encourages parties to permit less experienced lawyers to examine witnesses at trial and to have an important role at trial. Counsel should be prepared to discuss such opportunities at the Pretrial Conference.

**IT IS SO ORDERED.**

Dated: January 3, 2011

  
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LUCY H. KOH  
United States District Judge